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Supreme Court, U.S.
FILED
FEB 22 1999
CLERK

No. 98-1124

In The

Supreme Court of the United States

OCTOBER TERM 1998

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MONEM KABIR AND GREGORY P. RUEBUSCH

*Petitioner*

v.

SILICON VALLEY BANK
ROBERT GIONFRIDDO
ROBERT McMILLAN
SHERRY STEVENS
MARC CADIEUX
ROGER SMITH
JOHN DEAN
BACKSTROM & NEAL
MICHAEL SPENCE
ROBERT DANEY
WON CHOE

*Respondents.*

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**On Petition for Writ of Certiorari to the California State Supreme Court**

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# PETITIONERS' SUPPLEMENTAL BRIEF

H_____

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## SUPPLEMENTAL BRIEF IN SUPPORT TO PETITION

## I. INTRODUCTION

This Supplemental Brief is submitted by Petitioner Monem Kabir and Gregory Ruebusch in support of the Petition For Writ of Certiorari ("Petition") in this case. On February 11, 1999 the Petitioners reached a good faith settlement with a portion of the respondents in this case. As a result of this settlement, the only cross-complaint action in this case was resolved. Thus the Backstrom & Neal, Robert Daney and Michael Spence Preliminary Injunction, which is the remaining portion of this action now before the United States Supreme Court, was left with no supporting case for which the merits of the injunctive action could be heard by the court. Therefor this Supplemental Brief is warranted as per the United States Supreme Court Rules of Court, Rule 15.

The State of California Courts have no jurisdiction over the Preliminary Injunction Order which was issued for the Defendants, Certified Public Accounting Firm of Backstrom & Neal , Robert Daney and Mike Spence (Exhibit B2 of Petition) yet as a result of the political issues which surround the complaint action of the Petitioners, the Courts have ignored the Law and allowed this Order to stand.

This Order not only bars the Petitioners from their First Amendment rights but violates their Fourteenth Amendment rights. The Preliminary Injunction Order for Defendants, Backstrom & Neal and its Partners Robert Daney and Michael Spence blocks the Petitioners from discovery resulting in the Petitioners being unable to present a fair presentation of their case to the court and Trial by Jury.

On August 13, 1996, the Petitioners, Monem Kabir ("Kabir") and Gregory P. Ruebusch ("Ruebusch") filed a law suit entitled Monem Kabir and Gregory P. Ruebusch v. Silicon Valley Bank, Roger Smith, John Dean, Marc Cadieux, Robert McMillan, Sherry Stevens, Robert Gionfriddo, Won Choe, and Backstrom & Neal, (A Certified Public Accounting Firm) Robert Daney, Michael Spence, (Partners in the Certified Public Accounting Firm) as Santa Clara County Superior Court Action No. CV 760042 (hereinafter the "1996 Action"). Among other relief in the 1996 Action, Kabir and Ruebusch sought damages against the Defendants for alleged fraud, conspiracy to defraud, intentional interference with economic relationship and malicious prosecution. The complaint in the matter was subsequently amended on several occasions. The operative complaint as of the date of this Agreement is the Third Amended Complaint Monem Kabir and Gregory P. Ruebusch v. Silicon Valley Bank, Backstrom & Neal, Roger Smith, John Dean, , Marc Cadieux, Robert McMillan, Sherry Stevens, Robert Gionfriddo, Robert Daney, Michael Spence and Won Choe which seeks damages and other relief from the defendants for alleged fraud, fraudulent concealment, deceit, conspiracy to defraud and intentional interference with economic relationship.

On or about September 16, 1996, **ONLY defendant,** Silicon Valley Bank, filed a cross-complaint against Kabir and Ruebusch in the 1996 Action. Said cross-complaint sought damages and injunctive relief against Kabir and Ruebusch for defamation, trade libel, interference with prospective economic advantage, permanent injunction, conspiracy, abuse of process and malicious prosecution.

The allegations and claims of this cross-complaint formed the basis for the Preliminary Injunction of the defendant and cross-complainant Silicon Valley Bank which was also before the United States Supreme Court in this action until this portion of the case was settled on February 11, 1999.

On October 29, 1996 a bench order was issued by the Trial Court at the time of the Backstrom & Neal, Robert Daney, and Michael Spence Preliminary Injunction hearing. Between October 29, 1996 and the actual issuance of the order on March 14, 1997 over 130 days elapsed. (Refer to Exhibit B2 of the Petition For Writ Of Certiorari under United States Supreme Court No. 98-1124)

In this hearing the court ruled to include all defendants and defendants' attorneys. Further, as of this petition, Defendants Backstrom & Neal, Robert Daney and Michael Spence have not filed any cross complaint nor is there a request for permanent injunctions from them.

On December 18, 1996 the court issued the second preliminary injunction order. This second order was for the Silicon Valley Bank Respondents, whose cross-complaint was in support of the court's injunctive actions. (Refer to Exhibit B1 of the Petition For Writ Of Certiorari under United States Supreme Court No. 98-1124)

From September 13, 1996 through June 1997 the Backstrom & Neal Defendants, Demurred the Petitioners' complaint three times. Further the Defendants, and Respondents Backstrom & Neal, not being satisfied with the Superior Court's June 30, 1997 ruling, where the court denied their Motion for Demur and Motion to Strike the

Petitioners Third amended complaint, filed a writ of Mandamus to the Six District Appellate Court for State of California. The Appellate Court upheld the lower court's ruling and denied the Backstrom & Neal Defendant's Petition for Write of Mandate.

On or about July 1997, after a long series of Applications and Motions, Defendants, Backstrom & Neal, filed their Answer to the Third Amended Verified Complaint.

On or about February 11, 1999, Petitioners and Respondents Silicon Valley Bank and it Officers entered in to a good Faith Settlement Agreement which was approved by the Superior Court. Subsequently Petitioners have informed the US Supreme Court of this Settlement agreement.

The Backstrom & Neal, Robert Daney and Michael Spence Preliminary Injunction, ordered by the court on March 14, 1997, which is still active and pending before the United States Supreme Court under this action, No. 98-1124, now has no action or filing in support of the Preliminary Injunction on repository with any court of this land.

The Defendants, Respondents Backstrom & Neal have no standing in regard to the Preliminary Inductive Relief granted by the court. Further, the California Courts not only have no jurisdiction to issue the Preliminary Injunction Order, but the California Courts have failed to intervene and correct the mistake. Now with settlement of the cross-complaint action on February 11, 1999, the erroneous nature of the Backstrom & Neal injunction is completely exposed.

This Petition should be approved by this Court in the furtherance of justice and to stop this type of political ruling from wrongfully removing other citizens of the United States First Amendment and Fourteenth Amendment rights.

## II. DISCUSSION

### The California Courts Not Only Have No Jurisdiction To Issue The Backstrom & Neal Preliminary Injunction Order, But The Courts Failed To Intervene To Correct This Erroneous Order Which Was Issued Without Any Case Being Filed Before The Court.

It was judicial error for the Superior Court of the State of California to issue a preliminary injunction without any underlying action to support the preliminary injunctive relief requested. Further for the Sixth District Court of Appeals for the State of California and the California Supreme Court to ignore this issue compounded the error which flies in the face of all statutory law as well as established interpretations by the court.

The Federal Courts have ruled that "Four factors are particularly important in determining whether a preliminary injunction is proper: likelihood of plaintiff's success on the merits; whether injunction will save plaintiff from irreparable injury; whether injunction would harm others; and whether public interest would be served by the injunction." (Fed. Rules Civ. Proc., Rule 65, 28 U.S.C.A). In this case *Monem Kabir and Gregory P. Ruebusch v.*

*Silicon Valley Bank, Backstrom & Neal et. al.*(herein after referred to as the "Current Action")*)* now before the United States Supreme Court, the Defendants, Backstrom & Neal, Robert Daney, and Michael Spence have filed the preliminary injunction and the California Courts have approved it. The Backstrom & Neal defendants have no standing for the injunctive relief sought. Failure to meet any one of four requirements for issuance of temporary injunction will result in its denial. (*Solis v. Miles,* 524 F.Supp. 1069)

This fact is clear and for over two and one half years it has remained apparent, there was no cross complaint action filed by the Backstrom & Neal Defendants for the merits of the injunction to be considered against. Now with the settlement of only Cross Complaint action in this case on February 11, 1999, it has become very obvious that Backstrom & Neal Defendants Preliminary Injunction violates statute. For this reason alone this Petition should be granted by the court to stop the violation of the Plaintiffs' First Amendment Rights and Fourteenth Amendment Rights. Already the Petitioners action against the Defendants has been irreparably injured. The continuance of this injury now rests with the United States Supreme Court.

Again, further, it was judicial error for this injunction to ever have been issued, as in (*General Leaseways, Inc. v. National Truck Leasing Ass'n,* 744 F.2d 588) clearly points out in that the "Heart of four-factors test for preliminary injunction is comparison of likelihood, and gravity of two types of error: erroneously granting preliminary injunction, and erroneously denying it; likelihood of error depends on merits of case as they appear from preliminary injunction hearing."

There are no merits of a case for this injunction to stand and therefore it is clearly judicial error to which this court must right the wrong allowed to meet the political ends of a local area.

Although there is no dispute that the decision for a preliminary injunction rests with the court hearing the injunction, the issue of no underlying cross complaint existing to support the original injunctive relief is paramount for the courts to even have jurisdiction in the matter. The substantive lack of an underlying cause of action filed for Permanent Injunction or any cause of action for that matter, by the Backstrom & Neal Defendants led the court to abuse its discretion by resting its decision upon misapprehending the law with respect to underlying issues in litigation. (*Goldie's Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466). The likelihood that the Backstrom & Neal Defendants will prevail on the merits in this case as required in (*Jones v. Pacific Intermountain Exp.*536 F.2d 817, certiorari denied 97 S.Ct. 490, 429 U.S. 979, 50 L.Ed.2d 587) or that the court can render a meaningful decision after a trial on the merits as required in (*Dasco, Inc. v. American City Bank & Trust Co.*, N.A., 429 F.Supp. 767) are moot as there is no case for the injunctive action to be based upon.

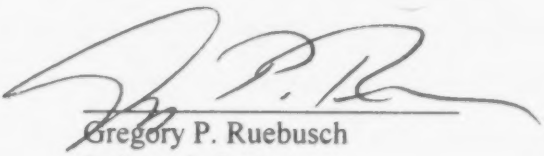
## CONCLUSION

This Petition for Writ of Certiorari should be granted to resolve the disputed issues on Appeal and to protect ordinary citizens of this land against misrepresentations in the court system and provide equal access to justice for a class of litigants that have the courage to

peacefully battle the political juggernaut and influential individuals in a local area through the exercise of their First Amendment rights and the Judicial System.

Date: February 22, 1999

Monem Kabir
In Propria Persona



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